IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1683 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THE STATE OF GUJARAT
Versus
JESUKH PUNA & ORS

==========

Appearance :
MR IM PANDYA APP for Appellant
DHARMESH D NANAVATY for Opponents No. 1 - 4, 6
None for Opponent No. 5

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 12/06/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and Order delivered by Additional Sessions Judge, Third Fast Track Court at Veraval, on 8th of April, 2004, in Sessions Case No. 244 of 1999, whereby the Trial Court acquitted all 26 accused of the charges levelled against them under Sections 147, 148, 149, 337, 307, 332 and 225 of the Indian Penal Code as well as for the offence punishable under Section 135 of the Bombay Police Act. The State has preferred Appeal against six respondents out of 26 accused acquitted and those six accused are respondents in this Appeal.

2 We have called for the Record and Proceedings from the Trial Court and the same is available with us. Learned Advocate for the respondents Mr. Dharmesh D Nanavati and learned APP Mr. I.M. Pandya have provided this Court with necessary copies of the evidence and documents. Appeal is required to be heard finally and upon the request of learned Advocates for the parties, the Appeal is Admitted and learned Advocate Mr. Dharmesh D Nanavati waives service on behalf of the respondents.

3 Briefly as per the prosecution case, the incident in question occurred on 29th of August, 1996. A crime was registered before Una Police Station, being Crime Register No. I-201/96, against three accused for the offence punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Those three persons belonged to village Gangda. On the crime being registered, Police Sub-Inspector of Una Police Station had been to village Gangda to arrest the accused with complainant of that case, named as, Virji Jivan. On that day, at 18.15 hours, from village Gangda, accused persons Shardul Nathu Garvi and Dhiru Amra Gohil and third accused, were arrested and were being brought to Una Police Station in a police jeep with police personnel and Police Sub-Inspector Jethva. Thereafter the P.S.I. had been to other village for other investigation and from there PSI Jethva instructed Police Constable Amirkhan Alikhan and Police Constable Ramji Hamir to take three accused of said Atrocity Case to Una Police Station and, therefore, Driver of the Jeep, complainant Virji Jivan, Police Constable Amirkhan Alikhan and Police Constable Ramji Hamir started to go in jeep towards Una. While they were passing near bus stand of village Gangda, at about 19.10 hours, they found a crowd of 500 to 700 persons and they attacked the police jeep and got freed the three accused from the arrest of the police. Both the Constables and complainant Virji Jivan were

beaten by the said crowd. Jeep Driver and both the Constables came to Una Police Station and reported the incident to P.I. Mr. Kara, and on receiving this information, P.I. Kara along with police mobile van and with police personnel, namely, Head Constable Y.D. Purohit, Police Constable Alabhai Karnabhai, Police Constable Dilipbhai Ravatbhai, Police Constable Rajanikant Bansidas, Police Constable Badhabhai Danabhai, Police Constable Nathubhai Desaibhai, Police Constable Jagjivan Mulubhai, Police Constable Parshottam Mopabhai and Police Constable Amirkhan Alikhan, started going towards village Gangda. At 20.30 hours, they again arrested the accused of the Atrocity case, namely Shardul Nathu Garvi and Dhiru Amra Gohil and while they were passing through the village Gangda at about 20.30 hours, a crowd gathered there and started pelting stones on police personnel and on the vehicles of the police. The persons in the crowd had dharia, spears and sticks with them. P.I. Kara had received injuries and six police personnel also received injuries in the said incident. Police ordered lathi charge but the crowd was not dispersed and, hence, P.I. Kara ordered firing. After firing of four rounds in the air and two rounds towards the crowd, the same was dispersed and it could not be ascertained at that time whether any person of the crowd was injured. However, Police Constable Parshottam Mopabhai, Police Constable Alabhai Karnabhai, Police Constable Dilipbhai Ravatbhai and Jeep Driver Bhikhubhai

Ramjibhai Gohil were injured in the said conflict. After giving complaint by Kara about this incident, a crime was registered and investigation was carried on by Police Inspector Kara and thereafter a charge sheet came to be filed in all against 30 accused for the above said offences. Out of them four had died. The case was committed to the Court of Sessions at Junagadh and a charge was framed against all the accused persons vide Exhibit-5 on 17th of November, 2003 by learned Additional Sessions Judge and 4th Fast Track Court at Veraval and all the accused pleaded not guilty. Hence, prosecution examined as many as 18 witnesses and produced on record voluminous documents.

4 PW-1 Dr. H.K. Gohil is examined at Exhibit 38, who at the relevant juncture was Medical Officer, CHC, Una. He examined Badhabhai Danabhai, PI M.S. Kara, Alabhai Karnabhai, Bhikubhai Ramjibhai, Yogendra Durlabhji Purohit, Dilipbhai Ravatbhai and Parshottam Mopa as well as Amirkhan Alikhan. They had simple injuries. He also examined Dilubhai Bhikhabhai, who was not police personnel and was injured in police firing. He also examined Vira Naran, who was also injured in police firing. Like wise, he also examined Valbhai Umrabhai, Babuben Takhubhai and both of them gave history that in the conflict police had beaten them. Certificates issued by PW-1 are on record.

5 PW-2 Badhabhai Danabhai Parmar was an Un-armed Police Head Constable at Una Police Station and had been to village Gangda along with police party and P.I. Kara. He stated that there was a crowd of 200 persons which crowd started pelting stones and due to which the police personnel were injured. After tear gas shell when crowd could not be controlled, P.I. Kara ordered firing.

6 PW-3 Amirkhan Alikhan examined at Exhibit-74 as a witness, who had first gone to village Gangda for arresting three accused of Atrocity case and thereafter he accompanied the police party along with P.I. Kara. According to him also, there were 500 to 700 persons in the crowd, and out of that crowd, on the spot, three persons were arrested. He could not remember those three persons. The crowd was pelting stones and in this conflict some police personnel including him had got injuries.

7 PW-4 Mebhabhai Malabhai examined at Exhibit-76 and he was an independent witness, who has not supported the prosecution case so far as the incident is concerned.

8 PW-5 Nanjibhai Jivabhai examined at Exhibit – 77 was also an independent witness, but he has not supported the prosecution

case.

9 PW-6 Exhibit-78 Police Constable Bikhubhai Ramjibhai Gohil was Jeep Driver of the jeep, in which three accused of atrocity case were got freed by the crowd, and thereafter he accompanied with the police party to village Gangda along with P.I. Kara. According to him also while along with Kara sahib they visited village Gangda, they found a crowd, which was infuriated, and to disperse the crowd, lathi charge was ordered, but the crowd was not dispersed, tear gas shells were used. The crowd was pelting stones and, therefore, firing was ordered and thereafter crowd was dispersed and in this conflict some police personnel were got injuries.

10 PW-7 Yogendra Durlabhji Purohit is examined at Exhibit-79 and he stated that along with P.I. Kara he also had been to village Gangda as he was serving as Head Constable at Una Police Station. A crowd was attacking police vehicle and police personnel and some police personnel were seriously injured. He stated that out of the crowd, he could recognize accused No.14 Dhiru Madha, accused No.24 Lakhman Ram, accused No.28 Valbaiben and accused No.29 Kubarben Dadu. According to him, out of these four persons, females had stones in their hands while Dhirubhai had dharia with him. According to him also,

tear gas shells were used and thereafter firing was ordered and the crowd was dispersed but on account of this conflict the police personnel were injured.

11 PW-8 Exhibit-80 Bhupendra Maganlal is panch of panchnama at Exhibit-81 in respect of damage to mobile van but he has not supported the prosecution case.

12 PW-10 Exhibit 85 Ramjibhai Dahyabhai is also an independent witness of the incident but he has not supported the prosecution case.

13 PW-11 Alabhai Karnabhai is examined at Exhibit-86 and he has also narrated the story that a crowd had attacked the police vehicle and police personnel in which the police personnel were injured on account of stone pelting, etc. He has stated that at the time of firing, the crowd started running helter – shelter and one Durlabhbhai Nathu, Kalidas Durlabhdas and Jitesh Hamirbhai were arrested from the spot.

14 PW-12 Dilipbhai Ravatbhai Dhakhda is examined at Exhibit-87 as he is also a police personnel of Una Police Station at the

relevant time and had accompanied P.I. Kara along with police party at village Gangda. He narrated the same story and stated that two accused were got arrested from the crowd and names of those two persons were Kalidas Durlabhji Bavaji and one Jaysukh Puna. He identified accused Jaysukh Puna, but he stated that he could not recognize any other accused.

15 PW-13 Nagarbhai Madhubhai Chouhan is examined at Exhibit-89 as a Revenue Circle and he prepared map of scene of offence which he had produced at Exhibit-72.

16 PW-15 Fakir Rajksha Ibhramsha is examined at Exhibit-92 and he is panch of panchnama at Exhibit-84 by which the police seized the weapons from accused Dhiru Madha and other accused. However, this panch has not supported the panchnama at Exhibit-84 and has been declared hostile.

17 Like wise PW-16 Vasantbhai Babubhai Soni is examined at Exhibit-93. He is also a panch of panchnama at Exhibit-94 but he has also not supported the prosecution case.

18 PW-17 Dhirajlal Dayaram Gondalia is examined at

Exhibit-95 as police personnel and was serving as Head Constable at Una Police Station on the day of the incident. He recorded the complaint of P.I. Kara in respect of the incident which was registered as Crime Register No. I-203 of 1996 and the same was produced by him at Exhibit-99.

19 PW-18 Mohamad Sadik Sulaiman Kara is examined at Exhibit-105 and he is the complainant and Investigating Officer. According to him, PSI Jethva and other police officers informed him at Una Police Station on 29th of August, 1996 that at village Gangda a crowd got freed three accused of atrocity case and, therefore, he along with the police party went to village Gangda. He did not name any of the accused and stated that three accused of the atrocity case were got arrested and at that time while they were passing through the village, the crowd attempted to intercept them and started pelting stones and attacked the police vehicle and personnel with weapons. He used tear gas shells but the crowd was not dispersed and ultimately he resorted to firing and four rounds fired in the air while two rounds fired towards the crowd and thereafter the crowd was dispersed. In this conflict, police personnel got injuries. He thereafter came to Police Station at Una and offered his complaint.

20 On evidence being over, the learned Trial Judge recorded the statements of the accused, in which each of the accused stated that he was innocent and denied the prosecution case in toto. After hearing both the parties at length, the learned Trial Judge came to the conclusion that the prosecution failed to prove the case against any of the accused beyond reasonable doubt and, hence, all the accused were acquitted, against the said judgment and order, this Appeal is preferred by the State.

21 Learned APP Mr. I.M. Pandya on behalf of the State and learned Advocate Mr. Dharmesh D. Nanavati for all the respondents were heard in detail. Mostly, learned APP stated that these were the six respondents, who were caught read handed from the crowd at the time of the incident and were named at least by one witness i.e. Police Constable Yogendrabhai Durlabhji. It is submitted that these accused were identified by this witness to be the members of unlawful assembly and, therefore, this Appeal is restricted to these respondents. He submitted that the learned Trial Judge erred in acquitting at least this six accused and, therefore, interference is required. While learned Advocate Mr. D.D. Nanavati supported the judgment and order impugned in this Appeal.

22 We have undertaken a complete and comprehensive appreciation of all vital features of the case and we have reappreciated the entire evidence on record with reference to the broad and reasonable probabilities of the case and also with reference to the contentions raised by both the sides. We are assisted by learned Advocates with necessary papers and Record and Proceedings of the Trial Court is available with us. Therefore, the request on behalf of the learned Counsels for hearing this matter finally, is granted and the matter was heard finally.

23 While going through the judgment and order impugned in this Appeal, it clearly appears that the learned Judge came to the conclusion that none of the police personnel could establish during evidence that any of the accused was present in the crowd and played any role to saddle them with any criminal liability. The learned Trial Judge noted that the case of prosecution was full of contradictions and it was impossible for police personnel to identify the accused individually and, hence, the prosecution could not establish that which accused caused injuries to which police personnel. Though the injuries could be proved by PW-1 Medical Officer, but the prosecution failed to prove that those injuries were caused by any of the accused and, hence, the order of acquittal.

24 When we re-appreciated the evidence, as narrated above, we have noted that except PW-7 Yogendra Durlabhji Purohit, examined at Exhibit-79, none of the witnesses could identify any of the accused from the crowd. PW-7 Head Constable Yogendra Durlabhji Purohit stated that among the crowd, accused No. 14 Dhiru Madha, accused No. 24 Lakhman Ram were there. He also identified two other females. He identified those four persons before the court. Now his evidence is required to be considered with other evidence of the prosecution case. When we appreciated the prosecution case as a whole, it is crystal clear that none of the witnesses stated that any of the accused caused injuries to any of the police personnel. Even if we believe the evidence of Yogendra Durlabhji Purohit, for limited extent, he has failed to establish beyond doubt the role played by the accused named by him. Not only that but in the complaint itself, as given by P.I. Kara, which is on record at Exhibit -107, it becomes clear that, when incident occurred, there was no sufficient light and, therefore, it could not be established that who was injured in police firing. In the said complaint, it is also not stated that who had beaten police personnel out of the crowd. Only the complaint revealed that some persons were arrested from the spot, but it could not be established that whether any role was played by any of the persons arrested from the spot. Mere presence at the scene of

offence would not saddle any liability on any person to be a member of an unlawful assembly. The injuries caused to the police personnel were very simple injuries as per the evidence of PW-1 Dr. Gohil - Exhibit – 38. There was a crowd of 200 to 500 persons as disclosed from the evidence recorded. It could not be said with certainty that who were in the crowd by police witnesses except Yogendra Durlabhji Purohit. PW-11 Police Constable Alabhai Karnabhai stated in his deposition at Exhibit – 86 that one person was arrested from the spot with iron rod, but no such person was arraigned as accused in the said prosecution case and, therefore, the say of Yogendra Durlabhji Purohit is contradicted by rest of the police witnesses. What is disclosed by the evidence of the police witnesses failed to establish that the persons named as Kalidas Durlabh, Jaisukh Puna and Jitesh Hamir were arrested from the spot. About this, there is major contradictions in the dispositions of each of the witnesses deposed about the incident. From the complaint and from the evidence of the complainant P.I. Kara, it is clearly borne out that there was no sufficient light at the time of the incident and there was not even electric light. There was no possibility or probability on the part of any of the police witnesses to identify any of the persons from the crowd, and from this evidence only because some persons were arrested from the spot, which itself is not proved beyond reasonable doubt or one witness Yogendra Durlabhji Purohit named

some persons to be the members of the crowd, would not saddle with any criminal liability on any of the accused. On overall scrutiny of the evidences as aforesaid, it clearly appears that the prosecution failed to prove the case of rioting and causing injuries to police personnel by the accused persons beyond reasonable doubt. The learned Trial Judge has given sufficient reasons for the acquittal of the accused and those reasons are from paras 18 to 21. We have no reason to take a different view from the conclusions arrived at by the learned Trial Judge after due appreciation of the evidence on record. This being an Appeal against the order of acquittal, even if two views are possible, the view favourable to the accused must be adopted, and unless the reasoning of acquittal given by the Trial Court are so perverse that the same could not stand to reason, no interference in the order of acquittal is permitted. We do not find any fault with the appreciation of the evidence undertaken by the Trial Court and conclusions arrived at for acquittal of the accused. In this view of the matter this appeal must fail.

25 In above view of matter, this Appeal stands dismissed.

(J. R. VORA, J.)

(BANKIM .N. MEHTA, J.)

pnnair